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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/589,432

08/15/2006

Michele Ludovico

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9491

22852

7590

03/25/2010

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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EXAMINER

MAPA, MICHAEL Y

ART UNIT

PAPER NUMBER

2617

MAIL DATE

DELIVERY MODE

03/25/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/589,432	<b>Applicant(s)</b> LUDOVICO ET AL.	
	<b>Examiner</b> Michael Mapa	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-42 and 44-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-42, 44, 46 and 47 is/are allowed.
- 6) ☒ Claim(s) 45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

1. The applicant has amended the following:

Claims: 24 have been amended.

Claims: 25-42 and 44-47 have not been amended.

Claims: 1-23 and 43 have been cancelled.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 45 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 45 claims "a computer readable medium encoded with a computer program product". However, there is no support that can be found in the original disclosure for a computer readable medium. With regards to the applicant's arguments filed on 07/08/09 that p. 13, lines 14 which recites "groups or modules of programs stored on disk and accessible on the network" and therefore adequately supports the

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claimed "computer readable medium", since the original disclosure fails to disclose and explicitly define "computer readable medium", the rejection is maintained.

4. Claim 45 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 45 claims "a computer readable medium encoded with a computer program product". However, there is no support that can be found in the specification for a computer readable medium. In addition, since a computer readable medium can both encompass transient and non transitory media, the computer readable medium is directed towards non statutory subject matter. With regards to the applicant's arguments filed on 07/08/09 that p. 13, lines 14 which recites "groups or modules of programs stored on disk and accessible on the network" and therefore adequately supports the claimed "computer readable medium", since "computer readable medium" was not explicitly defined, it is unclear to one of ordinary skill in the art as to what the "computer readable medium" is referred to in the specification, whether "the computer readable medium" is stored on disk or "the computer readable medium" is accessible on the network and to whether "the computer readable medium" is the disk or if the memory is the disk. Therefore, Claim 45 fails to comply with the enablement requirement.

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 45 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 45 claims “a computer readable medium”. However, the specification fails to explicitly define and disclose “a computer readable medium”. Since a computer readable medium can both encompass transitory (non statutory subject matter such as signals, waveform, etc.) and non transitory media, the computer readable medium is directed towards non statutory subject matter. The examiner suggests amending the claim to state “a non transitory computer readable medium” to only encompass statutory subject matter.

***Allowable Subject Matter***

7. Claims 24-42, 44 and 46-47 are allowed.
8. Claim 45 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph and 35 U.S.C. 101, set forth in this Office action.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Mapa whose telephone number is (571)270-5540. The examiner can normally be reached on MONDAY TO THURSDAY 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dwayne Bost can be reached on (571)272-7023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dwayne D. Bost/  
Supervisory Patent Examiner,  
Art Unit 2617

/Michael Mapa/  
Examiner, Art Unit 2617

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